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Attorneys for Plaintiffs:

FlowRider Surf, Ltd. and Surf Waves Ltd.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

FLOWRIDER SURF, LTD., a Canadian
corporation, and SURF WAVES, LTD., a
company incorporated in the United
Kingdom;

Plaintiffs,

vs.

PACIFIC SURF DESIGNS, INC., a
Delaware corporation;

Defendant.

CASE NO. 3:15-CV-01879-BEN

**DECLARATION OF J. RICK
TACHE IN SUPPORT OF
PLAINTIFFS' ADDITIONAL
BRIEFING REGARDING REQUEST
FOR SANCTIONS PURSUANT TO
COURT ORDER (ECF NO. 175)**

DECLARATION OF J. RICK TACHE

I, J. Rick Taché, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a Co-Managing Shareholder of the Greenberg Traurig's Orange County office and Co-Chair of Greenberg Traurig's Patent Litigation Group. I am the principal outside counsel for Plaintiffs FlowRider Surf, Ltd. and Surf Waves, Ltd. (collectively, "Whitewater"). The facts stated herein are within my personal knowledge and if called upon to testify I can truthfully and competently do so as to all matters herein.

2. Greenberg Traurig is an international, full service law firm with approximately 1,900 attorneys serving clients from 38 offices in the United States, Latin America, Europe, Asia, and the Middle East. The firm was No. 1 on the 2015 Law360 Most Charitable Firms list, third largest in the U.S. on the 2015 Law360 400, Top 20 on the 2015 Am Law Global 100, and among the 2015 BTI Brand Elite. The firm was among the Top 10 law firms on The National Law Journal's 2012 NLJ 250, and the most overall first-tier rankings, most first-tier metropolitan rankings and most practice areas with first-tier rankings for the United States in the U.S. News Media Group and Best Lawyers® "Best Law Firms" rankings for 2011-2012.

3. I have reviewed the detailed billing records in this matter for the months of January 2017 and February 2017. Based on my review of the those billing records in this matter, Whitewater incurred attorneys' fees and costs principally in connection with the following activities: (i) meeting and conferring regarding PSD's demand for all documents and pleadings exchanged in an unrelated arbitration between Plaintiff FlowRider Surf, Ltd. and non-party Wave Loch, LLC (the "Wave Loch arbitration") and participating in a call with Judge Major's chambers regarding PSD's motion to compel the same; (ii) opposing PSD's Motion to compel all documents and pleadings exchanged in the Wave Loch arbitration. The hours incurred for each of these tasks are well documented and based on contemporaneous records for each time keeper.

4. The detailed billing records indicate that the below-listed individuals were the primary time keepers involved in tasks related to PSD's Motion to Compel all documents and pleadings exchanged in an unrelated arbitration between Plaintiff FlowRider Surf, Ltd. and non-party Wave Loch, LLC (ECF No. 139):

J. Rick Taché

5. I am Co-Managing Shareholder of the Greenberg Traurig's Orange County office and Co-Chair of Greenberg Traurig's Patent Litigation Group. I am a registered patent attorney and intellectual property lawyer, with an emphasis on patent, trademark, copyright, and trade secret litigation. I have earned several degrees, including Bachelors' degrees from the University of New Brunswick in 1984 and the University of Windsor in 1989, a Master's degree in Ohio State University in 1985, and a Juris Doctor degree from the University of Detroit Mercy School of Law in 1989. Since graduating from law school, I have been admitted to practice in several state and federal courts across the country, including all U.S. District Courts in the state of California and the U.S. Court of Appeals for the Federal Circuit. I have also received several awards and recognitions for my work, including by *IAM* magazine's "The IAM Patent 1000" from 2012 to 2016 and Managing IP Magazine's World IP Handbook and Survey's "IP Stars" from 2013-2016.

6. My billing rate is \$995 an hour. My hourly rate is reasonable, as confirmed by an independent analysis from PriceWaterhouse Coopers.¹ PriceWaterhouse's 2015 "Billing Rate and Associate Salary Survey" (the "PWC Survey") for comparable firms in Los Angeles² indicates that the median hourly rates of

¹ The Survey is subject to a confidentiality agreement and therefore has not been filed with the Court. If requested by the Court, the Survey can be provided for in camera inspection.

² The data from Los Angeles firms is used here as that data contained a sample size nearly four times that for the Orange County data, and, therefore, represents a more comprehensive data set for the comparable firms' billing rates.

1 equity partners with 21 to 25 years of intellectual property litigation experience is \$950
2 per hour and \$1,025 for equity partners with 31-35 intellectual property litigation
3 experience.³ Further, I am familiar with the prevailing market rate in the community,
4 and my rate is in line with the rate of other lawyers of reasonably comparable skill,
5 experience, and reputation in the community.

6 7. I billed a total of 3.4 hours for work in connection with PSD's Motion to
7 Compel at my hourly billing rate of \$995. That work included reviewing and analyzing
8 PSD's Motion to Compel and Reply brief. I also supervised the associates who were
9 primarily involved in drafting Whitewater's Opposition to PSD's Motion to Compel by
10 reviewing and revising the brief and supporting declarations to ensure that the work-
11 product was consistent with the client's goals in this case. All of my work was
12 necessary to oppose PSD's Motion to Compel.

13 ***Leanna C. Costantini***

14 8. Ms. Costantini is an intellectual property litigation associate in the Orange
15 County, California office of Greenberg Traurig, LLP. Ms. Costantini earned her
16 Bachelor of Arts degree from the University of California, Los Angeles in 2008, and
17 her Juris Doctor, from University of California, Irvine School of Law in 2013. Since
18 graduating law school, she has represented companies and individuals in civil litigation
19 in federal and state courts at all phases of litigation including discovery, trial, and
20 appeal. Ms. Costantini is admitted to practice in California and in the United States
21 District Courts for the Central, Northern, and Southern Districts of California.

22 9. Ms. Costantini is the lead associate involved in this case, and is intimately
23 familiar with the relevant facts and legal issues. Her billing rate is \$480. The 2015
24 PWC Survey confirms the reasonableness of Ms. Costantini's rate. That Survey
25

26 ³ There is no data in the Survey for equity partners with 26-30 years of intellectual
27 property litigation experience.
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1 indicates that the median hourly rate of intellectual property litigation associates who
2 graduated from law school in 2013 is \$493 per hour. Thus, Ms. Costantini's billing rate
3 falls below the median for someone of her seniority at comparable firms. Further, Ms.
4 Costantini's rate is in line with the rate of other lawyers of reasonably comparable skill,
5 experience, and reputation in the community.

6 10. Ms. Costantini billed a total of 32.5 hours for work in connection with
7 PSD's Motion to Compel at hourly billing rate of \$480. That work included the
8 following activities:

9 a. 5.4 hours – Meeting and conferring with opposing counsel through
10 written and telephonic correspondence, and preparing for and participating in a
11 telephonic conference with Judge Major's chambers regarding PSD's demand for
12 all documents and pleadings exchanged in the Wave Loch arbitration.

13 b. 27.1 hours – Preparing Whitewater's Opposition, including: (i)
14 reviewing and analyzing PSD's Motion to Compel, (ii) researching relevant case
15 law and statutes; (iii) reviewing dozens of discovery correspondence between
16 Whitewater and PSD regarding the Wave Loch arbitration; (iv) drafting the
17 opposition brief and supporting declaration; (v) drafting the motion to seal and
18 proposed order for documents designated under the Protective Order and filed in
19 support of the Opposition; and (v) overseeing the filing of the Opposition and
20 supporting declarations and motion to file under seal.

21 11. All of Ms. Costantini's work was necessary to oppose PSD's Motion to
22 Compel.

23 ***Roger L. Scott***

24 12. Mr. Scott is a litigation associate in the Orange County, California office
25 of Greenberg Traurig, LLP. Mr. Scott has represented companies and individuals in
26 civil litigation in federal and state courts including at trial and arbitration. He earned
27 his Bachelor of Arts degree from the University of California, Santa Barbara in 2002,
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1 and his Juris Doctor, *cum laude*, from the Catholic University of America, Columbus
2 School of Law in 2006. Mr. Scott is admitted to practice in California and in the United
3 States District Courts for the Central, Eastern, Northern, and Southern Districts of
4 California, and the United States Court of Appeals for the Ninth Circuit.

5 13. Mr. Scott's billing rate is \$645. The PWC Survey confirms the
6 reasonableness of Mr. Scott's rate. That report indicates that the hourly rate of
7 litigation associates who graduated in 2006 range from \$546 to \$704, with a median
8 rate of \$628 per hour. Thus, Mr. Scott's billing rate falls within the range of rates for
9 someone of his seniority at comparable firms. Further, Mr. Scott's rate is in line with
10 the rate of other lawyers of reasonably comparable skill, experience, and reputation in
11 the community.

12 14. Mr. Scott billed a total of 1.6 hours for work in connection with PSD's
13 Motion to Compel at his hourly billing rate of \$645. That work included drafting his
14 own declaration regarding the Wave Loch arbitration (in which Mr. Scott directly
15 participated) and associated confidentiality issues, and the declaration of Thomas
16 Lochtefeld regarding his understanding and expectations of confidentiality in that
17 arbitration. Mr. Scott also assisted in revising Whitewater's Opposition brief. All of
18 Mr. Scott's work was necessary to oppose PSD's Motion to Compel.

19 ***Alexis L. Kovacs***

20 15. Ms. Kovacs is an intellectual property litigation paralegal in the Orange
21 County, California office of Greenberg Traurig, LLP who has worked on this case since
22 its inception. Ms. Kovacs has more than 19 years of experience working as a paralegal.
23 She received her Bachelor of Arts degree and paralegal certification from California
24 State University, Chico. Ms. Kovacs has been part of eight trial teams in matters
25 ranging from breach of contract to patent infringement.

26 16. Ms. Kovacs' billing rate is \$375. Ms. Kovacs' rate is consistent with the
27 prevailing market rate in the community. She billed a total of 8.7 hours for work in
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connection with PSD's Motion to Compel at her \$375 hourly billing rate. That work included gathering, organizing and preparing exhibits in support of Whitewater's opposition, electronically filing the opposition and exhibits through the CM/ECF system, and coordinating delivery of mandatory chambers copies for the court per local rules and the Court's standing order. All of Ms. Kovacs' work was necessary to oppose PSD's Motion to Compel.

17. For all of the foregoing items, Whitewater incurred the following fees, which are broken down by professional, hours spent, and hourly rate charged:

Name/Position	Hours	Hourly Rate	Total Fees
Rick Taché (shareholder)	3.4	\$995	\$3,383.00
Roger Scott (associate)	1.6	\$645	\$1,032.00
Leanna Costantini (associate)	32.5	\$480	\$15,600.00
Alexis Kovacs (paralegal)	8.7	\$375	\$3,262.50
TOTAL			\$23,277.00

18. In addition to the above, Whitewater incurred fees in connection with several other time keeper's work including: (i) \$845 for work performed by Shaun Hoting (former Greenberg Traurig associate), who was also involved in the meet and confer process regarding PSD's demand for documents related to the Wave Loch arbitration; (ii) \$455 for work performed by Tyler Andrews (Greenberg Traurig shareholder), who also assisted in reviewing and revising Whitewater's Opposition; and (iii) \$1,520 for work performed by Thaddeus Houston (Greenberg Traurig associate), who also conducted research related to Whitewater's Opposition. While all of the tasks performed by the additional timekeepers were necessary for the case, they have not been included in the total amount requested, as I recognize that there are certain

inefficiencies that can exist by having multiple shareholders and associates staffed on a matter.

19. Whitewater also incurred \$63.50 in attorney services fees for preparing courtesy copies for the Court.

20. Whitewater will also incur an additional \$9,254 in fees in connection with the preparing and filing of Whitewater's additional briefing and this declaration, including: (i) analyzing the Court's Order regarding PSD's Motion to Compel, (ii) researching and drafting additional briefing for sanctions, and (iii) reviewing and summarizing billing records. Those fees broken down by professional, hours spent, and hourly rate charged are as follows:

Name/Position	Hours	Hourly Rate	Total Fees
Rick Taché (shareholder)	.5	\$995	\$497.50
Roger Scott (associate)	10.6	\$645	\$6,837.00
Leanna Costantini (associate)	4	\$480	\$1,920.00
TOTAL			\$9,254.00

21. In total, Whitewater requests reimbursement for \$32,594.50 in attorneys' fees and costs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 24, 2017

/s/ J. Rick Taché

J. Rick Taché